



15 APR 2005

Mark S. Bicks
Roylance, Abrams, Berdo & Goodman LLP
1300 19th Street, Suite 600
Washington, DC 20036

In re Application of	:	
SCHULTE	:	DECISION
Application No.: 09/601,280	:	
PCT No.: PCT/EP98/06930	:	
Int. Filing Date: 02 November 1998	:	RE: TRANSLATION
Priority Date: 22 September 1998	:	
Attorney's Docket No.: 40098	:	
For: FLOOR CARPET INSTALLING SYSTEM	:	

This application is in response to applicant's response filed March 18, 2005.

BACKGROUND

On 02 November 1998, applicant filed international application PCT/EP98/06930, which claimed priority of an earlier international application filed 22 September 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 30 March 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 08 July 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 22 March 2001.

On 31 July 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a executed declaration as required by 35 U.S.C. 371(c)(4); a purported translation of the annexes to the IPER and a preliminary amendment.

On 11 September 2001, the United States Designated/Elected Office mailed a Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) indicating a 35 U.S.C. 102(e) date of 31 July 2000.

The application has received a final rejection and applicant has filed a notice of appeal and brief in the file. On 24 September 2004, applicant filed a petition under 35 U.S.C. 181 for entry of a substitute specification. Applicant's petition is being held in abeyance pending the outcome of the following matter.

In a decision dated 10 December 2004, it was noted that applicant had not filed a translation of the international application as required by 35 U.S.C. 371(c)(2). The following was stated:

A review of the international application reveals that a translation of the international application as required by 35 U.S.C. 371(c)(2) was not filed. It is noted that the published international application has 10 claims and the brief description of the drawings list 3 figures. None of the purported translations filed contains a claim set containing claims 1-10. Nor do any of the purported translations of the description have a brief description of the drawings 1-3, other than a marked-up specification filed on 31 July 2000. However these sheets are indicated as having been modified. In the petition filed 24 September 2004, applicant states (pg 2) that he filed translations of both the international application and the annexes. However, it is noted that the transmittal letter of 31 July 2000 does not indicate that a translation of the international application was filed. Furthermore, it does not appear that applicant later filed an English translation of the international application. It appears that what applicant filed, may have been a translation of the international application with the amendments made during international preliminary examination (Chapter II) proceedings during the international stage of the application. This is not proper under 37 CFR 1.495, which requires that a translation of the international application and a separate translation of the annexes to the international application be filed.

The Notification of Acceptance mailed on 11 September 2001 was vacated and applicant was required to file an English translation of the international application as required by 35 U.S.C. 371(c)(2) and the processing fee for filing the English translation of the international application later than 30 months from the priority date as required by 37 CFR 1.492(f) within two months from the mail date of the decision.

DISCUSSION

With the 18 March 2005 response, applicant has filed an acceptable English translation of the international application as required by 35 U.S.C. 371(c)(2) and the processing fee for filing the English translation of the international application later than 30 months from the priority date. Furthermore, applicant has submitted an English translation of the annexes to the international preliminary examination report (identified as AMENDED SHEETS/IPEA/EP) consisting of four sheets of description and two sheets of description. These translated amended sheets should be replace the translated sheets of the original international application. Therefore, any further amendments to the applications would have to amend the international application with the translated annexes entered. Accordingly, a new Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) indicating a 35 U.S.C. 102(e) date of 18 March 2005 will be mailed to applicant.

CONCLUSION

The filing of the acceptable English translation of the international application satisfied the requirement of by 35 U.S.C. 371(c)(2). This application is being return to the National Stage Processing Division for issuance of a new Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) indicating a 35 U.S.C. 102(e) date of 18 March 2005.

Afterwards, the application will be returned to the Technology Center 1770 for consideration of the entry of the substitute specification.



Leonard E. Smith
PCT Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration

LES:ls

Telephone: (571) 272-3297
Facsimile: (571) 273-0459